

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patentees:	Mark et al.	Patent No.	7,137,322
Serial No.:	09/824,838	Issue Date	November 21, 2006
Filed:	April 4, 2001	Examiner:	
Title:	SCREW HOLDER	Attorney Docket No:	8932-392-999
		(CAM No.:	232200-999106)

**REQUEST FOR RECONSIDERATION OF PATENT  
TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705**

**Office Of Petitions**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. § 1.705(d), the Patentees request reconsideration of the patent term adjustment indicated on the face of Patent No. 7,137,322. Entry and consideration of the remarks made herein into the record of Patent No. 7,137,322 are respectfully requested.

The face of Patent No. 7,137,322 states that the term of the patent is extended or adjusted under 35 U.S.C. § 154(b) by 0 days. Patentees respectfully request that the United States Patent and Trademark Office ("USPTO") reconsider the patent term adjustment determination and add a patent term extension of 255 days. It is respectfully submitted that Patentees are entitled to a patent term extension of Patent No. 7,137,322 in accordance with 35 U.S.C. § 154 for failure of the USPTO to issue a patent within three (3) years of the actual filing date of the application due to the USPTO's failure to take certain actions within specified time frames. The following are relevant dates and information pursuant to 37 C.F.R. § 1.705 to enable the USPTO to reconsider and determine the patent term adjustment:

1) This application was filed on April 4, 2001, and the patent issued on November 21, 2006, more than five (5) years from the date the above-identified application was filed.

2) A first Office Action was mailed on December 11, 2001, which was replied to by Applicants on June 11, 2002 (three months after the due date of March 11, 2002).

3) Another Office Action was mailed on September 11, 2002, which was timely responded to on December 11, 2002.

4) An Advisory Action was mailed on December 20, 2002 and a response was filed on February 4, 2003.

5) A restriction requirement was mailed on February 11, 2003; an Office Action was mailed on April 17, 2003; and a further Office Action was mail on May 12, 2003. It is believed that the May 12, 2003 Office Action was a substantial duplicate of the April 17, 2003 Office Action.

6) A response to the May 12, 2003 Office Action was timely filed on July 30, 2003.

7) On April 15, 2004, the USPTO erroneously issued a Notice of Abandonment.

8) On May 11, 2004 Applicants filed a Petition to Withdraw Holding of Abandonment with a copy of the Amendment filed on July 30, 2003.

9) On July 14, 2004, a Decision granting the Petition to Withdraw Holding of Abandonment was issued by the USPTO.

10) On September 22, 2004, a Notice of Non-Compliant Amendment was mailed.

11) On October 22, 2004, a response to the Notice of Non-Compliant Amendment was filed.

12) On December 21, 2004, a final Office Action was mailed.

13) On February 22, 2005, an Amendment in response to the final Office Action was filed.

14) On March 7, 2005, an Advisory Action was mailed.

15) On March 18, 2005, an RCE was filed.

The above evidence demonstrates that on July 30, 2003 Patentees timely filed a response to the Office Action of May 12, 2003. Instead of acting on the response, the USPTO erroneously issued a Notice of Abandonment on April 15, 2004. Patentees did not receive a response to their July 30, 2003 Amendment until December 21, 2004. Reasonable

efforts were engaged in by Applicants to conclude prosecution within a reasonable period of time.

Therefore, Patentees respectfully request the USPTO to reconsider the patent term by:

- (1) adding the number of days beginning April 5, 2004 (one day after the three-year period from the filing date of April 4, 2001) and ending on March 18, 2005 (the date the RCE was filed); and
- (2) reducing the extended patent term in (1) above by the period of time during which Patentees failed to reply to the Office Action of December 11, 2001 within three (3) months of the mailing date of the Office Action.

Accordingly, the number of days beginning April 5, 2004 and ending on March 18, 2005 is **347** days. Pursuant to 37 C.F.R. § 1.704(b), the extended patent term of 347 days will be reduced by a period equal to the period of time during which Patentees failed to reply to the Office Action of December 11, 2001 within three (3) months of the date of the mailing of the Office Action. Patentees filed a response to the December 11, 2001 Office Action on June 11, 2002, **92** days after the first due date of March 11, 2002. Patentees believe that the extended patent term of **347** days is to be reduced by **92** days. Thus, the actual number of days for the patent term extension of the above-identified application is believed to be **255 days**, not the 0 day(s) indicated on the face of Patent No. 7,137,322. Patentees respectfully submit that Patent No. 7,137,322 is not subject to a terminal disclaimer.

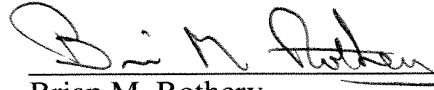
In accordance with 37 C.F.R. §§ 1.705(b)(1) and 1.18(e), it is estimated that the required fee for filing this Request is \$200.00. The Commissioner is hereby authorized to charge the required fee(s) to Jones Day Deposit Account No. 50-3013.

All of the documents necessary to substantiate this application for extension of patent term should already be in the USPTO file for the above-identified application.

However, if required, Patentees are willing to provide a copy of any of the above-referenced documents.

Date: January 22, 2007

Respectfully submitted,



Brian M. Rothery

35,340  
(Reg. No.)

**JONES DAY**

222 East 41st Street

New York, New York 10017

(212) 326-3939